

Senate Bill 267

By: Senators Hamrick of the 30th, Pearson of the 51st and Rogers of the 21st

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

To amend Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, the "Georgia Condominium Act," so as to define certain terms; to provide that a declarant shall pay certain expenses; to provide for exceptions; to provide for an exception for a certain obligation to provide a certificate of occupancy; to provide for the effect on land use and zoning ordinances or laws of an expandable condominium; to provide for the creation of a subcondominium; to provide for a subassociation; to provide for insurance; to provide for the effect of certain liens; to provide for eminent domain; to provide for the description of certain units; to provide for assessments; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, the "Georgia Condominium Act," is amended in Code Section 44-3-71, relating to definitions, by adding new paragraphs to read as follows:

"(19.1) 'Master association' means an association of a master condominium.

(19.2) 'Master condominium' means a condominium in which the condominium instruments permit one or more of the units to constitute a subcondominium."

"(26.1) 'Subassociation' means an association of a subcondominium.

(26.2) 'Subcondominium' means the property consisting of a unit of an existing condominium lawfully submitted under this article by the recordation of separate condominium instruments pursuant to this article."

"(27.1) 'Subunit' means a unit that constitutes a portion of a subcondominium."

**SECTION 2.**

Said article is further amended in Code Section 44-3-80, relating to allocation and liability for common expenses and how assessments are made, by revising subsection (d) as follows:

1 ~~"(d)(1) No unit owner other than the association shall be exempted from any liability for~~  
2 ~~any assessment under this Code section or under any condominium instrument for any~~  
3 ~~reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the~~  
4 ~~use or enjoyment of his unit or any part of the common elements. The declarant shall pay~~  
5 ~~for all common expenses until the first common expense assessment is due. Thereafter,~~  
6 ~~no unit owner other than the association shall be exempted from any liability for any~~  
7 ~~assessment under this Code section or under any condominium instrument for any reason~~  
8 ~~whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or~~  
9 ~~enjoyment of his or her unit or any part of the common elements.~~

10 (2) Notwithstanding paragraph (1) of this subsection, if authorized by the declaration,  
11 a declarant who is offering units for sale may elect to be excused from payment of  
12 assessments assessed pursuant to subsection (c) of this Code section against those unsold  
13 and unoccupied units for a stated period of time after the declaration is recorded, not to  
14 exceed 24 months after the date the declaration is recorded; provided, however, that as  
15 to assessments assessed pursuant to subsection (c) of this Code section, the declarant  
16 must pay common expenses incurred during such period which exceed the amounts  
17 assessed against other unit owners in the same condominium. During any period in  
18 which the declarant is excused from payment of assessments assessed pursuant to  
19 subsection (c) of this Code section:

20 (A) No capital contributions, start-up funds, initiation fees, or contributions to capital  
21 reserve accounts which are receivable from unit purchasers or unit owners and payable  
22 to the association at closing may be used for payment of common expenses;

23 (B) No portion of the payment of assessments collected from owners intended to be  
24 utilized for reserves for deferred maintenance, reserves for depreciation, or other  
25 reserves, as shown on the operating budget for the condominium, may be used for  
26 payment of common expenses; and

27 (C) No prepayments of assessments made by owners shall be used for the payment of  
28 common expenses prior to the time the assessments would otherwise be due.

29 (3) If during the period that the declarant is excused from payment of assessments as  
30 provided in paragraph (2) of this subsection common expenses are incurred resulting  
31 from a casualty which is not covered by proceeds from insurance maintained by the  
32 association, such common expenses shall be assessed against all unit owners owning  
33 units on the date of such casualty, and their respective successors and assigns, including  
34 the declarant with respect to units owned by the declarant. In the event of such an  
35 assessment, all units shall be assessed in accordance with the allocation of the liability  
36 for common expenses set forth in the declaration as provided in subsection (c) of this  
37 Code section.

(4) During any such time as the declarant has the right to control the association pursuant to Code Section 44-3-101, any capital contributions, start-up funds, initiation fees, or contributions to capital reserve accounts which are receivable from unit purchasers or unit owners and payable to the association at closing and any portion of the payment of assessments collected from owners intended to be utilized for reserves for deferred maintenance, reserves for depreciation, or other reserves, as shown on the operating budget for the condominium, shall be deposited into one or more separate reserve accounts and shall not be used to pay for any common expenses, without the agreement of the unit owners of units to which two-thirds of the votes in the association pertain, exclusive of any vote or votes appurtenant to any unit or units then owned by the declarant. No waiver of the right of any unit owner to grant or withhold consent to such agreement shall be valid."

### SECTION 3.

Said article is further amended by revising paragraph (5) of subsection (e) of Code Section 44-3-111, relating to sales of residential condominium units for residential occupancy, information required to be furnished by seller, buyer's right to void contract, limitations period, attorney's fees, and penalty for willful violation, as follows:

"(5) If, but only if, any applicable statute, ordinance, rule, or regulation requires, permits, or provides for the issuance of a certificate of occupancy by any officer, department, or agency of any governmental entity, the contract shall contain an express obligation on the part of the seller to furnish to the buyer at or prior to closing a true, correct, and complete copy of a duly issued certificate of occupancy covering the unit which is the subject matter of the covered contract unless the buyer executes a separate form at or before closing setting forth that the contract applies to a condominium unit for which the seller is not obligated to obtain a certificate of occupancy before conveyance of the unit to the buyer and such form contains the following statement in boldface type or capital letters no smaller than the largest type in the text:

'THE SELLER IS NOT OBLIGATED TO OBTAIN A CERTIFICATE OF OCCUPANCY BEFORE CONVEYANCE OF THE UNIT TO THE BUYER. THE LACK OF A CERTIFICATE OF OCCUPANCY SHALL NOT EXCUSE THE BUYER FROM ANY OBLIGATION TO PAY ASSESSMENTS TO THE ASSOCIATION.'; and"

**SECTION 4.**

Said article is further amended in Code Section 44-3-114, relating to the effect of such article upon land use, zoning, building, and subdivision laws and the effect of a certain Code section, by adding a new subsection to read as follows:

"(c) No subdivision law, ordinance, or regulation shall apply to the additional property of an expandable condominium for so long as the additional property may be added to the expandable condominium in accordance with the provisions of this article and the declaration. If the additional property is not deemed separate from the submitted property under any zoning, land use, subdivision, building, or life safety law, code, regulation, or ordinance at the time of the establishment of the condominium, the additional property shall not be deemed separate from the submitted property under any zoning, land use, subdivision, building, or life safety law, code, regulation, or ordinance so long as the additional property may be added by the declarant to the expandable condominium in accordance with the provisions of this article and the declaration."

**SECTION 5.**

Said article is further amended by adding a new Code section to read as follows:

"44-3-117.

(a) Except as otherwise set forth in this Code section, the creation of a subcondominium shall not limit the application of this article in its entirety to such subcondominium.

(b) To the extent permitted in the condominium instruments, a condominium unit may be submitted by the owner thereof to a subcondominium and such owner shall thereafter be deemed the declarant, as such term is defined in paragraph (13) of Code Section 44-3-71, of such subcondominium.

(c) Upon the creation of a subcondominium:

(1) No tax or governmental assessment shall be levied against the unit as a whole but instead shall only be levied on the subunits;

(2) The subassociation shall represent and be responsible for acting on behalf of the subunit owners in discharging the rights and obligations of the unit owner as a member of the master association, including, without limitation, voting the interests of the unit in the master association and paying assessments owing on the unit to the master association;

(3) The insurance required in paragraph (1) of Code Section 44-3-107 may be obtained by either the subassociation or the master association for the condominium in which the subcondominium is a unit;

(4) No lien for labor or services performed or materials furnished in the improvement of the unit shall be filed against the subcondominium as a whole but shall only be filed

1 against the subunits, and such lien may be discharged by the owner of any subunit in the  
2 same manner provided in subsection (d) of Code Section 44-3-95;

3 (5) No eminent domain action shall be brought against the unit as a whole but only  
4 against the subunit owners thereof; and

5 (6) No description of a subunit shall be deemed to be vague, uncertain or otherwise  
6 insufficient if the description complies with Code Section 44-3-73.

7 (d) The description of submitted property or additional property to a subcondominium  
8 required by this article shall be valid if described by a legal description by metes and  
9 bounds description or by a description of a unit in a master condominium in the manner  
10 provided for in Code Section 44-3-73.

11 (e) All sums lawfully assessed by a master association against a subassociation shall have  
12 the same effect as provided in subsection (a) of Code Section 44-3-109.

13 The recording of the declaration for a subcondominium pursuant to this article shall  
14 constitute record notice of the existence of the lien, and no further recordation of any claim  
15 of lien for assessments shall be required.

16 (f) In the event any lien becomes effective against a subunit as provided in subsection (e)  
17 of this Code section, the subassociation may remove that lien from the subunits by the  
18 payment of the amount attributable to the subunits or any subunit owner may remove that  
19 lien from his or her subunit by the payment of the amount attributable to his or her subunit.  
20 The amount shall be computed by reference to the liability for common expenses pertaining  
21 to that condominium unit pursuant to subsection (c) of Code Section 44-3-80. Subsequent  
22 to the payment, discharge, or other satisfaction of such amount, the subunit owner of that  
23 subunit shall be entitled to have that lien released as to his or her subunit in accordance  
24 with applicable provisions of law, and notwithstanding anything to the contrary in Code  
25 Sections 44-3-80 and 44-3-109, the master association shall not assess or have a valid lien  
26 against that subunit for any portion of the common expenses incurred by the master  
27 association in connection with that lien.

28 (g) Not less than 30 days after notice is sent by certified mail or statutory overnight  
29 delivery, return receipt requested, to the subunit owner both at the address of the subunit  
30 and at any other address or addresses which the subunit owner may have designated to the  
31 master association in writing, the lien of the master association may be foreclosed by the  
32 master association by an action, judgment, and foreclosure in the same manner as other  
33 liens for the improvement of real property, subject to superior liens or encumbrances, but  
34 any such court order for judicial foreclosure shall not affect the rights of holders of superior  
35 liens or encumbrances to exercise any rights or powers afforded to them under their  
36 security instruments. The notice provided for in this subsection shall specify the amount  
37 of the assessments then due and payable together with authorized late charges and the rate

1 of interest accruing thereon. No foreclosure order against a lien arising out of this  
2 subsection shall be permitted unless the amount of the lien is at least \$2,000.00. Unless  
3 prohibited by the master condominium instruments, the master association shall have the  
4 power to bid on the subunit at any foreclosure sale and to acquire, hold, lease, encumber,  
5 and convey the same. The lien for assessments shall lapse and be of no further effect, as  
6 to assessments or installments thereof, together with late charges and interest applicable  
7 thereto, four years after the assessment or installment first became due and payable.

8 (h) Any subunit owner, mortgagee of a subunit, person having executed a contract for the  
9 purchase of a subunit, or lender considering the loan of funds to be secured by a subunit  
10 shall be entitled upon request to a statement from the subassociation or its management  
11 agent setting forth the amount of assessments past due and unpaid together with late  
12 charges and interest applicable owed by the subassociation to the master association. If the  
13 subassociation or its management agent states an amount less than the amount actually  
14 owed by the subassociation to the master association, the lien created by Code Section  
15 44-3-109 for any amounts in excess of the stated amount shall be subordinate to the lien  
16 of any first priority mortgage covering the subunit.

17 (i) In addition to the documents required to be furnished to the prospective buyer under  
18 subsection (b) of Code Section 44-3-111, if the covered contract applies to a condominium  
19 unit which is part of a subcondominium, the following shall be provided to the prospective  
20 buyer:

21 (1) A copy of the declaration for the master condominium, and a copy of each  
22 amendment thereto; and

23 (2) A copy of the articles of incorporation and bylaws of the master association, and of  
24 each amendment to either."

## 25 SECTION 6.

26 All laws and parts of laws in conflict with this Act are repealed.